Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of: Developing a Unified Intercarrier Compensation Regime T-Mobile *et. al.* Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs	CC Docket No. 01-92

SBC'S OPPOSITION TO PETITIONS FOR RECONSIDERATION

In its *T-Mobile Order*,[1] the Commission created two new rules to facilitate the negotiation of interconnection arrangements between wireline and wireless carriers. In doing so, the Commission made clear its preference—consistent with the "pro-competitive process and policies reflected in the 1996 Act"—that non-access interconnection relationships between carriers should be governed by "negotiated agreements" and "contractual arrangements."[2] To address one facet of those relationships, the Commission relied on its plenary authority under §§ 201 and 332 of the Act to prohibit LECs from imposing compensation obligations for non-access CMRS traffic pursuant to tariffs rather than contracts.[3]

[1] T-Mobile, *et. al.*, Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs, *Declaratory Ruling and Report and Order*, FCC 05-42, CC Docket No. 01-92 (Feb. 24, 2005)("T-Mobile Order").

[2] *T-Mobile Order* ¶ 14.

[3] *Id.*; 47 C.F.R. § 20.11(e).

As a natural corollary of that new rule, the Commission also adopted a new rule that effectively makes symmetrical the obligation to negotiate contracts governing such traffic.[4] Rule 20.11(f) thus allows ILECs to request interconnection from CMRS carriers, and it provides teeth to that provision by also allowing ILECs to invoke the arbitration process in § 252 of the Act in the event the parties are unable to successfully negotiate an agreement.[5] The Commission adopted rules 20.11(e) and (f) in order to "facilitate the exchange of traffic between wireline LECs and CMRS providers and encourage the establishment of interconnection and compensation terms through the negotiation and arbitration process contemplated by the 1996 Act."[6] Preservation of rule 20.11(f) is an integral component of both those objectives.

In response to the *T-Mobile Order*, two parties—the American Association of Paging Carriers ("AAPC") and the Rural Cellular Association ("RCA")—filed petitions that would substantially limit the applicability and effectiveness of the Commission's new rules. RCA suggests that new rule 20.11(f) be gutted so as to apply only to compensation arrangements, and not to interconnection terms. AAPC requests that the Commission rescind new rule 20.11(f) in its entirety, essentially because it does not like the application of that rule to paging carriers. The Commission should deny their petitions. Limitation or elimination of rule 20.11(f) as requested by RCA and AAPC would upset the carefully crafted balance established by the Commission's *T-Mobile Order* and would once again create ambiguity and confusion in the interactions of wireline and wireless carriers.

The continued application of rule 20.11(f) to interconnection issues generally and to paging carriers specifically is critical. Indeed, although the ostensible circumstances giving rise

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[4] 47 C.F.R. § 20.11(f).

[5] *Id.*

[6] *T-Mobile Order, App. D.* ¶ 3.

to T-Mobile's original petition was the termination rates charged by rural ILECs for two-way CMRS-originated traffic, that is by no means the only aspect of the relationship between wireless and wireline carriers that is at issue in this proceeding.[7] Rule 20.11(f) in its current form is an important and long overdue tool in the resolution of substantial controversy and uncertainty with respect to paging carriers that has persisted for several years.

AAPC is thus incorrect in its assertion that rule 20.11(f) "as applied to the paging industry, imposes a 'solution' for which there is no rational basis whatsoever."[8] As Qwest points out in a recent *ex parte* letter, paging carriers frequently order services from ILEC intrastate tariffs and then refuse to pay the tariffed rates for those services.[9] They believe they are entitled to do so as a result of various decisions issued by the Commission interpreting the application of Commission rule 51.703(b) to paging carriers.[10] They interpret those decisions to mean not only

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[7] AAPC's passing suggestion that new rule 20.11(f) is unlawful because it was enacted "in apparent disregard of the Administrative Procedures Act" is plainly incorrect. The APA requires that the Commission provide notice of "either the terms or substance of the proposed rule or a description of the subjects and issues involved." 47 U.S.C. § 553(b)(3). In its NPRM for this proceeding, the Commission specifically sought comment on the rules necessary for LEC-CMRS interconnection. *See, e.g.*, Developing an Unified Intercarrier Compensation Regime, *Notice of Proposed Rulemaking*, FCC 01-132, CC Docket No. 01-92 ¶ 90 (April 27, 2001)("We seek comment on the rules we should adopt to govern LEC interconnection arrangements with CMRS providers, whether pursuant to section 332, or other statutory authority."); *see also AAPC Petition* at 2 (T-Mobile petition was "incorporated into the previously established proceeding in CC Docket No. 01-92 *broadly inquiring into intercarrier compensation arrangements*")(emphasis added). Moreover, the issue of LECs being able to request interconnection negotiations with CMRS carriers clearly was an issue raised by several carriers in response to the Commission's September 30, 2002, Public Notice (DA 02-2436) seeking comments on T-Mobile's petition. *See T-Mobile Order* ¶ 15.

[8] *AAPC Petition* at 6.

[9] *See* Letter from Robert B. McKenna, Associate General Counsel, Qwest, to Marlene H. Dortch, Secretary, Federal Communications Commission, Docket No. 01-92 (June 16, 2005)("Qwest Letter").

[10] *See, e.g.*, Letter from A. Richard Metzger, Jr., Chief, Common Carrier Bureau, Federal Communications Commission to Keith Davis, Southwestern Bell Telephone, *et. al.*, DA 97-2726 (Dec. 30, 1997)("Metzger Letter"); Memorandum Opinion and Order, *TSR Wireless, LLC, et al. v. U S West Communications, Inc., et al.*, 15 FCC Rcd 11166. FCC 00-194 (June 21, 2000) ("TSR Order"), *aff'd Qwest Corp. v. FCC*, 252 F.3d 462 (D.C. Cir. 2001) ("Qwest"); Metrocall, Inc. v. Southwestern Bell Telephone Co., *et. al.*, *Memorandum Opinion and Order on Supplemental Complaint for Damages*, FCC 01-279, File Nos. E-98-16, E-98-17 (Oct. 2, 2001); Memorandum Opinion and Order, *Texcom, Inc., d/b/a*

that they are entitled to obtain facilities from SBC without paying for them, but that they need not negotiate interconnection agreements in order to do so. A fundamental fallacy in their position, however, is that none of those decisions permit paging carriers to obtain facilities completely free of charge.[11] Moreover, as Qwest points out, SBC has no authority to charge rates for tariffed services other than the rates set forth in its tariffs. Thus, even if the paging carriers are correct that they are entitled to some discount for the facilities they desire, their intransigent refusal to negotiate interconnection agreements has left SBC with no practical means of charging rates that reflect those discounts. Until the Commission issued rule 20.11(f), the only practical means of effectuating the rates and terms governing interconnection with paging carriers had been to render bills for the tariffed services ordered by such carriers and then negotiate and resolve post-billing disputes.

Not surprisingly, that process has proven to be a highly inefficient and uncertain means of establishing interconnection terms with paging carriers. The *T-Mobile Order*, however, provides a more reasonable approach by permitting ILECs to request interconnection negotiations and to avail themselves of the arbitration process in § 252 of the Act in the event the parties are unable to successfully negotiate an agreement. Rule 20.11(f) thus provides a valuable tool to resolve interconnection issues between ILECs and paging carriers.

AACP and RCA would have the Commission revert to the chaotic state that prevailed before the *T-Mobile Order*. They raise a hodgepodge of objections to the Commission's new rule, none of which has merit. First, AACP suggests that the new rule should be rejected because

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Answer Indiana, v. Bell Atlantic Corp., d/b/a Verizon Communications, 16 FCC Rcd 21493, FCC 01-347 (Nov. 28, 2001) ("Texcom Order"); *Mountain Communications, Inc. v. Qwest Communications International, Inc.*, 17 FCC Rcd 2091, DA 02-250 (2002) ("Mountain Communications"), *rev. denied*, 17 FCC Rcd 15135 (2002).

[11] At a minimum, the Commission has made clear that SBC is entitled to charge for transiting traffic. *See TSR Order* ¶ 19 n.70; *Metrocall Order* ¶ 8; *Texcom Order* ¶ 4.

it conflicts with the Act. In particular, AACP claims that 20.11(f) should be rejected because § 252 of the Act provides only for non-ILECs to request interconnection negotiations.[12] The mere fact, however, that § 252 allows for non-ILECs to request negotiations of ILECs, does not preclude the possibility that ILECs also could request negotiations with non-ILECs. The Act by no means prohibits the Commission from adopting a rule allowing ILECs to request negotiations.[13]

The Commission, moreover, clearly has authority under the Act to address the issue that is the subject of its new rule. Section 251(a) requires all telecommunications carriers to interconnect directly or indirectly with other telecommunications carriers,[14] and § 201 endows the Commission with the authority to "prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this chapter."[15] The Commission also has unique authority under various provisions of the Act over interconnection issues that pertain specifically to CMRS providers.[16] Finally, the Commission has authority under 47 U.S.C. § 154(i) to "make such rules and regulations, and issue such orders, not inconsistent with this chapter, as may be necessary in the execution of its functions." In this instance, nothing in the

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[12] *AACP Petition* at 4.

[13] New rule 20.11(f) also does not run afoul of § 251(c) as RCA suggests. *RCA Petition* at 5. In particular, RCA is incorrect that the new rule could be used to require CMRS carriers to interconnect directly with ILECs for CMRS-originated traffic. *Id.* Rule 20.11(f) does not subject CMRS carriers to the substantive scope of the negotiations and arbitrations conducted pursuant to § 252, *i.e.*, the requirements of §§ 251(b) and (c). In particular, rule 20.11(f) does not say that in being subject to the negotiation and arbitration procedures set forth in § 252 a CMRS provider becomes obligated to provide interconnection under the requirements applicable to ILECs in § 251(c). Rather, rule 20.11(f) uses the term "interconnection" in a more generic sense, consistent with the general obligation imposed on all carriers by § 251(a).

[14] 27 U.S.C. § 251(a).

[15] 47 U.S.C. § 201(b).

[16] *Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 800 n. 21 (8th Cir. 1997), *aff'd in part and reversed in part sub nom., AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999)("we believe that the Commission has the authority to issue the rules of special concern to the CMRS providers.")

Act prohibits ILECs from initiating interconnection negotiations with other carriers, and the Commission found it necessary to provide that ability to ILECs in order to "facilitate the exchange of traffic between wireline LECs and CMRS providers."[17] Sections 154(i), 201, 251, and 332 thus provide ample authority for the Commission's action.[18]

Finally, AACP objects to rule 20.11(f) in essence because it believes paging carriers should be afforded preferential treatment because they are smaller than other carriers.[19] There is no merit to this claim. As an initial matter, not all paging carriers are "mom and pop" operations, *e.g.*, USA Mobility and Skytel, and it is not uniformly the case that paging carriers are smaller than other CMRS carriers or wireline carriers. More fundamentally, whatever their stature, there is no principled reason that paging carriers should not have to negotiate contracts with their wholesale suppliers and customers, just as any other commercial business does every single day.[20] Rule 20.11(f), moreover, does not "compel" carriers to either arbitrate or negotiate, as AACP falsely suggests.[21] A paging carrier remains free to adopt an approved interconnection agreement between an ILEC and another paging carrier, precisely as hundreds of smaller CLECs have done for the past eight years. The fact that some paging carriers are small businesses is

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[17] *T-Mobile Order, App. D* ¶ 3.

[18] RCA and AAPC are incorrect that rule 20.11(f) constitutes an improper delegation of authority in contravention of *USTA v. FCC,* 359 F.3d 554, 566 (D.C. Cir.), *cert. denied* 125 S.Ct. 316 (2004)("USTA II"). *RCA Petition* at 10; *AAPC Petition at 6*. In *USTA II,* the issue was whether the Commission could delegate a task to the states—the determination of "which network elements shall be made to CLECs on an unbundled basis"—that had been specifically and indisputably assigned to the Commission by Congress. *USTA II,* 359 F.3d at 565. In this instance, there is no specific task assigned to the Commission in the Act which the Commission has delegated to the states.

[19] *AACP Petition* at 5.

[20] *See Qwest Letter* at 3 n. 10 ("The AACP Petition for Reconsideration in the T-Mobile docket seems to exhibit a similar disjunction, seemingly staking out a claim that paging carriers are exempt from the Communications Act and normal contract principles, having instead the right to interconnect with ILECs totally outside the law.")

[21] *AACP Petition* at 5.

simply no reason to allow them to continue ordering services or facilities without a contract setting forth the applicable rates, terms, and conditions for those services or facilities.

CONCLUSION

The Commission should deny the petitions filed by AAPC and RCA. The Commission's goals of facilitating the exchange of traffic, providing greater regulatory certainty, and reducing litigation costs are worthwhile, and its approach of encouraging interconnection negotiations is a logical and reasonable means of achieving those goals. The Commission should retain rule 20.11(f) in its entirety as adopted in its *T-Mobile Order*.

Respectfully submitted,

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